



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 413

IN THE MATTER OF STATE STREET BANK AND TRUST COMPANY

DISPOSITION AGREEMENT

This Disposition Agreement (Agreement) is entered into between the State Ethics Commission (Commission) and the State Street Bank & Trust Company (State Street) pursuant to §5 of the Commission's **Enforcement Procedures**. This Agreement constitutes a consented to final Commission order enforceable in the Superior Court pursuant to G.L. c. 268A, §4(j).

On March 8, 1989, the Commission initiated a preliminary inquiry, pursuant to G.L. c. 268A, §4(a), into possible violations of the conflict of interest law, G.L. c. 268A, by State Street. The Commission concluded that inquiry and, on November 9, 1989, found reasonable cause to believe that State Street violated G.L. c. 268A, §3(a).

The Commission and State Street now agree to the following facts and conclusions of law:

1. State Street is a Massachusetts trust company chartered under the laws of Massachusetts to engage in the business of banking. Its principal place of business is Boston, Massachusetts.
2. The City of Boston Retirement Board is a State Street client. The Boston Retirement Board invests the approximately \$800 million in funds contributed by city workers towards their pensions. State Street's Trust Department serves as the custodian of those funds. In fiscal years 1987 and 1988, State Street received from the City of Boston \$198,817.00 and \$367,194.00, respectively, in custodian fees.
3. From March 1, 1987 to March 4, 1987, State Street hosted its ninth annual Master Trust Client Conference at the Arizona Biltmore Resort in Phoenix, Arizona. From February 28, 1988 to March 2, 1988, State Street hosted its tenth annual Master Trust Client Conference at the Westin La Paloma Resort in Tucson, Arizona. State Street invited its Trust Department's private and public sector clients to the conferences.
4. The Master Trust Client Conferences included morning investment seminars and lectures between approximately 8:00 a.m. and noontime, afternoon recreational events, and evening dinners and entertainment.
5. State Street used the conferences as educational events for its clients, and as a means to generate and maintain good will and client relations.
6. In 1987 and 1988, State Street Vice-President John Houlihan invited City of Boston Auditor Leon Stamps to the Master Trust Client Conferences. As Auditor, Stamps was one of the three members of the Boston Retirement Board.
7. Stamps attended the conferences. State Street paid for Stamps' on-site hotel, recreation and entertainment expenses, including extra nights immediately before or after the formal conferences, aggregating five nights for the 1987 and 1988 conferences. Stamps' on-site expenses totaled \$1,716.67. State Street did not pay for Stamps' airfare.

8. Section 3(a) of G.L. c. 268A prohibits, other than as provided by law, the giving or offering of anything of substantial value to any municipal employee for or because of any official act performed or to be performed by such employee.^{1/} The Commission may impose a fine up to \$2,000 for each violation of §3.

9. By paying for Stamps' lodging, recreation and entertainment expenses when Stamps was in a position as a member of the Boston Retirement Board to vote to award custodian business to the bank, State Street violated §3(a).^{2/}

10. In this case, there is no evidence that State Street had a corrupt intent,^{3/} nor that it intentionally violated G.L. c. 268A, §3. Additionally, there is no evidence that the conduct of Auditor Stamps was improperly influenced by the conferences.

11. In view of the foregoing and because of the educational aspects of the events at issue, the Commission has determined that the public interest would be served by resolving the matter without further enforcement proceedings and with the imposition of less than the maximum fine. Thus, this matter will be resolved on the following terms and conditions agreed to by State Street:

1. that it pay to the Commission the amount of two thousand dollars (\$2,000.00) as a civil penalty for its violations of §3; and
2. that it waive all rights to contest the findings of fact, conclusions of law, and terms and conditions contained in this Agreement in this or any related administrative or judicial civil proceeding to which the Commission is a party.

Date: April 30, 1992

^{1/}In the past, the Commission has considered entertainment expenses totalling \$50 or more to constitute "substantial value." *Public Enforcement Letter 88-1*.

^{2/}State Street has since restructured its conference arrangements to conform to the conflict of interest law as applied and interpreted by the Commission.

^{3/}For §3 purposes, it is unnecessary to prove that the gratuities given were generated by some specific identifiable act performed or to be performed. The prohibitions of this section are prophylactic in nature and apply where the parties act without corrupt intent and even though no official act is improperly influenced by the benefit conferred. It is sufficient that the gratuities are given the official "in the course of his everyday duties for or because of official acts performed or to be performed by him and where he was in a position to use his authority in a manner which could affect the gift giver." *United States v. Standefer*, 452 F. Supp. 1178, 1183, (W.D. Pa. 1978) (aff'd on other grounds, 447 U.S. 10 (1980)), citing *United States v. Niederberger*, 580 F.2d 63, 68-9 (3rd Cir. 1978). See also *United States v. Evans*, 72 F.2d 455, 479-80 (5th Cir. 1978).